IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 238 of 2002 (M/B)

Dev Pal Singh S/o Sri Sardar Singh,
R/o Village Kandoi, Gram Panchayat Binhar,
District Dehradun. …… Petitioner

Versus

1. State of Uttaranchal,
through its Chief Secretary,
Secretariat, Dehradun.
2. Executive Engineer,
PWD Kalsi, Sahiya,
Dehradun. …….. Respondents

Ms. Prabha Nautiyal, Advocate on behalf of Mr. A. Rab, Advocate for the petitioner.
Mr. N.C. Gupta, Standing Counsel for respondents Nos. 1 to 3.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. M.M. Ghildiayl, J.

RAJEEV GUPTA, C.J. (Oral)

Ms. Prabha Nauliyal, Advocate for the petitioner.

Mr. N.C. Gupta, Standing Counsel for the respondents.

They are heard.

2. Petitioner Dev Pal Singh has filed this writ petition styled as 'Public Interest Litigation' for the following reliefs:

> "i. Your Lordships may graciously be pleased to issue a Writ of Mandamus, or a Writ in the nature of Mandamus or any other appropriate Writ/Order or affirmative Direction in the form of some remedial measures in public interest in the background of the Constitutional aspirations against the executive inaction be passed to link the Hathi Pawn Road from Village Sameth via Village Kandoi interconnecting Villages Upper Bhadogi, Lower Bhadogi, Bahaila, Tapar, Udiya Khet and Mandava to Madarsu Village.
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> ii. Such other relief or relieves as this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be granted."

3. The petitioner's main grievance appears to be that 'Hathi Pawn Road' proposed to be constructed by the respondents is not going to benefit the residents of villages Kandoi, Upper Bhadogi, Lower Bhadogi, Bahaila, Tapar, Udiya Khet and Mandava. As such, the petitioner is seeking a direction to the respondents to realign the said road so as to connect these villages also.

4. The respondents have filed their counter affidavit. Para 4 to 11 of their counter affidavit read as follows:

> "4. That the contents of para no. 2 of the writ petition as stated are admitted to the extent of the formation of the Uttaranchal State but the claim that the interim government of Uttaranchal proposed the road to connect the villages with the Hathi Pawn motor road is not admitted. It is further stated here that before the formation of the Uttaranchal State U.P. State vide Government Order No. 4181/28-5-97-104/90 dated 20.12.97 sanctioned Rs. 63.00 lakh for the construction of 9 km. to 13 km. (5 km.) of the road in extension to already made 8 km. of Barhwara – Hathi Pawn road.
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> 5. That in reply to the contents of para no. 3 of the writ petition it is stated here that the road has been sanctioned by the State Government of Uttaranchal is not correct. The contention made by the petitioner that the villages of upper Bhadogie, lower Bhadogie, Bhaila, Udiya Khet, Tapar and Mandava were not linked to the road because of political consideration is wrong. However it is pertinent to mention here that because of the topographical conditions of the hills it is not possible to connect or inter link all the villages to the roads.
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> 6. That the contents of para no. 4 of the writ petition as stated are not correct hence, not admitted. It is pertinent to mention here that the road was not proposed from village Sameth to Madarsu but the road Kandoi to Madarsu is only the extension of the already made road of 8 km. It is further mentioned here that the road is extended in such a way that maximum villages, 'majre' hamlet could be benefited. Villages such as Khulkhet, First and Second Dowara, Jakhara, Jamani Khet, Suina etc. would be benefited from this road.
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> It is further pertinent to mention here that if the road is taken from Sameth to Kandoi, the length of the road would increase as such the tourist, commuter, going via Barwhala to Massooree (Hathipawn) would have to travel a longer distance. The road is constructed (taken), as per the policy of the Government, in such a

way so as to connect maximum numbers of villages and to benefit maximum numbers of persons, within the stipulated sanctioned length of the road.

7. That the contents of para no. 5 of the writ petition need no further comment as detailed reply has already been given in the preceding paras of this counter affidavit.

8. That the contents of para no. 6, 7 and 8 of the writ petition are being matter of record hence, need no comment.

9. That the contents of para no. 9 of the writ petition as stated are not admitted. It is stated that the road is constructed keeping in view the topography of the area and only after conducting detail survey of the area. The road is constructed (carried) in such a way so as to give benefit to maximum villages, persons of the area. At present about 4.250 i.e. from 9 km. to 12.250 km. Road has been made from Sameth (extension of 8 km. Road) and the road from 12.250 km to 13 km is under construction and the construction of the road is being done in accordance to the survey. The road after the length of 13 km. Would pass through revenue village Madarsu and Matogi which are the revenue villegs of Binhar area and enter Massorree Nagar Palika Area and thereafter join Hathipawn. In these circumstances it is not possible to construct this road from Sameth and joining the village Kandoi.

10. That in reply to the contents of para no. 10 of the writ petition it is stated here that sketch plan provided by the petitioner is not admission able to the answering respondent as already a road of length 4.250 km. Has been constructed from Sameth.

11. That the contents of para no. 11 of the writ petition as stated are not admitted as maximum ‘majere’ mentioned by the petitioner have already been benefited by the road links. It is further stated that because of the topographical conditions of the hills it is not possible to connect or inter link all the villages to the roads.”

5. From the facts narrated in the above quoted paragraphs, it is apparent that within the sanctioned budget, it is not possible for the respondents to realign the road so as to connect other villages namely Kandoi, Upper Bhadogi, Lower Bhadogi, Bahaila, Tapar, Udiya Khet and Mandava also.

6. It would have been ideal if the road could have been realigned in the manner suggested by the petitioner. It is also true that the State

can undertake developmental activities within the available financial means only.

7. As it is not possible to realign the ‘Hathi Pawn Road’ within the sanctioned budget so as to connect other villages also, the reliefs sought by the petitioner cannot legally be granted.

8. We, however, hope that the respondents will take into account the petitioner’s grievances and find out some way to redress the same.

9. With the above observation, the writ petition stands disposed of.

(M.M. Ghildiyal, J.) **(Rajeev Gupta, C.J.)**
24.03.2006 **24.03.2006**

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